

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Competitive Product Prices
Global Direct Contracts 1 (MC2010-17)
Negotiated Services Agreement

Docket No. CP2012-9

ORDER APPROVING
ADDITIONAL GLOBAL DIRECT CONTRACTS 1
NEGOTIATED SERVICE AGREEMENT

(Issued January 13, 2012)

I. INTRODUCTION

The Postal Service recently filed a Notice seeking Commission approval of an additional negotiated service agreement (Agreement) within the Global Direct Contracts 1 product established in Docket Nos. MC2010-17 and CP2010-18.¹ For the reasons discussed below, the Commission approves the addition of the instant Agreement to the Global Direct Contracts 1 product.

¹ Notice of United States Postal Service Filing of Functionally Equivalent Global Direct Contracts 1 Negotiated Service Agreement, December 29, 2011 (Notice).

II. BACKGROUND

Product history. Global Direct Contracts 1 was added to the competitive product list in Order No. 386.² It provides a rate for mail acceptance within the United States; transportation to a receiving country of mail that bears the destination country's indicia; and payment by the Postal Service of the appropriate settlement charges to the receiving country.³ Two additional agreements were later included within this product. See Docket No. CP2010-19 and Docket No. CP2011-52.⁴

The Postal Service identifies the contract that is the subject of this case as the immediate successor of the contract approved in Docket No. CP2011-52, which is scheduled to expire on January 15, 2012, when Canada Post institutes price changes for its domestic Admail product.⁵ Notice at 3. In light of the impending expiration, the Postal Service seeks to enter into the Agreement that is the subject of this docket. The instant Agreement is scheduled to remain in effect until 11:59 p.m. on the date prior to the date in January 2013 when Canada Post Corporation implements price changes for Admail or, in the event no such price change occurs, January 31, 2013. *Id.* at 3.

The Postal Service asserts that the instant Agreement is functionally equivalent to the previous Global Direct Contracts 1 agreement in Docket Nos. MC2010-17 and CP2010-18, in that it shares cost and market characteristics, and therefore should be

² Docket Nos. MC2010-17 and CP2010-18, Order Concerning Filing of Functionally Equivalent Global Direct Contracts 1 Negotiated Service Agreement, January 11, 2010 (Order No. 386).

³ Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts, Docket Nos. MC2008-7, CP2008-16 and CP2008-17, issued July 16, 2008 (Governors' Decision No. 08-10). The Commission later revised the Mail Classification Schedule language proposed in Governors' Decision No. 08-10 to reflect the actual payment practice under typical Global Direct Contracts. See Docket Nos. MC2009-9, CP2009-10 and CP2009-11, Order No. 153.

⁴ Docket No. CP2011-52, Order No. 659, Order Approving Additional Global Direct Contracts 1 Negotiated Service Agreement, February 1, 2011.

⁵ The instant Agreement, similarly, is scheduled to remain in effect until the date prior to the date in January 2013 when the Canada Post Corporation institutes price changes for its domestic Admail product.

classified as a Global Direct Contracts 1 agreement. *Id.* It contends that the only differences, aside from cosmetic or customer-specific updates, are that the instant Agreement:

- concerns Admail to Canada, instead of Lettermail to Canada or Incentive Lettermail to Canada;
- includes a more detailed description of procedures related to penalties for mail not in conformance with Canada Post Corporation regulations;
- takes into account a January 16, 2012 change in Canada Post Corporation pricing;
- establishes a different annualized minimum commitment;
- takes into consideration a possible January 2013 change in Canada Post Corporation pricing; and
- provides (in revised Annexes) prices, mailing locations, and a summary of preparation and presentation requirements for Admail to Canada.

Id. at 3-4.⁶

The Postal Service contends, notwithstanding these differences, that the instant Agreement is functionally equivalent to the previously filed Global Direct Contracts 1 agreement because the core terms and conditions remain the same. *Id.* at 4. It requests that the Commission include this Agreement within the Global Direct Contracts 1 product. *Id.* In support of the request action, the Notice includes, as attachments, redacted versions of the Agreement; the certified statement required by 39 CFR 3015.5(c)(2); Governors' Decision No. 08-10, which authorizes Global Direct and certain other contracts; and an application for non-public treatment of the redacted material.⁷

⁶ See Notice at 3-4 for the respective Articles of the contract that are affected.

⁷ These appear in Attachment 4. The Postal Service provides redacted versions of the supporting financial documentation as a separate Excel file.

The Commission provided notice of the Postal Service's filing, appointed a Public Representative, and provided the public with an opportunity to comment in Order No. 1096.⁸

III. COMMENTS

The Commission received comments from the designated Public Representative supporting approval of the Postal Service's proposal.⁹ The Public Representative's conclusion, after reviewing similarities and differences, is that the instant Agreement is a functionally equivalent Global Direct Contracts 1 agreement. *Id.* She asserts that her review of the worksheets indicates that the Agreement will comply with the requirements of 39 U.S.C. 3633 and 39 CFR 3015.5 and is consistent with the interests of the general public. *Id.* at 2-3.

IV. COMMISSION ANALYSIS

The Postal Service's filing presents two issues for the Commission to consider: (1) whether the instant Agreement satisfies 39 U.S.C. 3633, and (2) whether it is functionally equivalent to the previous Global Direct Contracts 1 contracts.¹⁰ In reaching its conclusions, the Commission has reviewed the Notice, the Agreement, the financial analyses provided under seal, and the Public Representative comments.

Statutory requirements. The Postal Service contends that the instant Agreement and supporting documents filed in this docket establish compliance with the statutory provisions applicable to rates for competitive products (39 U.S.C. 3633). Notice at 2. It asserts that Governors' Decision No. 08-10 supporting this Agreement establishes a

⁸ Notice and Order Concerning Filing of Additional Global Direct Contracts 1 Negotiated Service Agreement, January 3, 2012 (Order No. 1096).

⁹ Public Representative Comments, January 10, 2011.

¹⁰ The Commission has found, in a previous set of cases, that the Global Direct Contracts product is properly classified as a competitive product. See Order No. 153, Docket Nos. MC2009-9, CP2009-10 and CP2009-11, Order Concerning Global Direct Contracts Negotiated Service Agreement, December 19, 2008, at 7.

pricing formula and classification ensuring that each contract meets the criteria of 39 U.S.C. 3633 and regulations promulgated thereunder. *Id.*, Attachment 3.

Based on analysis of the submitted data, the Commission finds that the instant Agreement should cover its attributable costs (39 U.S.C. 3633(a)(2)); should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)); and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed instant Agreement that it comports with the provisions applicable to rates for competitive products.

Functional equivalence. The Postal Service asserts that the instant Agreement is functionally equivalent to the Global Direct Contracts 1 agreement in Docket Nos. MC2010-17 and CP2010-18 in that it shares similar cost and market characteristics, and therefore should be classified as a Global Direct Contracts 1 agreement. *Id.* at 3. In support of this position, it identifies and describes the differences in the contracts, apart from purely cosmetic changes and updates to reflect a different customer, and asserts that these differences are no more significant than the differences between the Agreement that was the subject of Docket Nos. CP2010-19 and CP2011-52 and the Agreement that was the subject of the baseline dockets (Docket Nos. MC2010-17 and CP2010-18), which the Commission determined to be functionally equivalent notwithstanding differences. *Id.* at 4.

Moreover, the Postal Service asserts that the substance of the core terms and conditions remain the same: the Postal Service is providing the customer with Global Direct, a competitive service for delivery of Letter Post items bearing foreign postage and indicia. *Id.* It adds that the cost and market characteristics of this Agreement are substantially similar to those of prior Global Direct contracts, and that nothing detracts from the conclusion that these agreements are functionally equivalent. *Id.*

Finding. Having evaluated the similarities and differences of the instant Global Direct Contracts 1, the Commission finds that the instant Agreement may be treated as

functionally equivalent, and that it is properly included within the Global Direct Contracts 1 product on the competitive product list.

Other considerations. The Postal Service shall, no later than 30 days after the effective date of the current contract, provide the costs, volumes, and revenues disaggregated by weight associated with the contract approved in Docket No. CP2011-52. The data are to be filed in Docket No. CP2011-52.

The instant Agreement states that the Postal Service shall notify the mailer of its effective date within 30 days after receiving all necessary regulatory approvals and it will remain in effect for 1 year or if price changes occur, it will terminate prior to the price change date or, at the latest, if no price changes occur, January 31, 2013. The Postal Service shall notify the Commission of the effective dates of the instant Agreement. If it terminates earlier than scheduled, the Postal Service shall inform the Commission prior to the new termination date.

In addition, within 30 days of the expiration of the instant Agreement, the Postal Service shall file the costs, volumes, and revenues disaggregated by weight associated with the instant Agreement, including any penalties paid.

The Commission finds that the negotiated service agreement submitted in Docket No. CP2012-9 is appropriately included within the Global Direct Contracts 1 product.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2012-9 is included within the product Global Direct Contracts 1 (MC2010-17 and CP2010-18).
2. The Postal Service shall notify the Commission of the instant Agreement's effective dates and if the Agreement terminates earlier than the scheduled termination date, as discussed in this Order.

3. The Postal Service shall, no later than 30 days after the expiration date of the instant Agreement, provide the costs, volumes, and revenues disaggregated by weight associated, including any penalties paid.

By the Commission.

Ruth Ann Abrams
Acting Secretary